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Schindler Elevator Corporation*

UNITED STATES DISTRICT COURT

FOR THE STATE OF NEVADA

SETH SCHORR,

Plaintiff,

vs.

WOLF PRINCIPAL HOLDINGS, LP d/b/a
FREMONT & 9th APARTMENTS;
SCHINDLER ELEVATOR CORPORATION;
DOES I through X; and ROE BUSINESS
ENTITIES I through X, inclusive,

Defendants.

Case No.

PETITION FOR REMOVAL

JURY DEMANDED

PETITION FOR REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446(a), Defendant Schindler Elevator Corporation (“Schindler”) gives notice of removal of this action, *Seth Schorr v. Wolf Principal Holdings, LP, et al.*, Case No. A-22-856668-C from the Eighth Judicial District Court of Clark County, Nevada, to the United States District Court for the District of Nevada. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of Plaintiff Seth Schorr’s Summons, Complaint, and all process, pleadings, and orders filed in the state court action are attached as **Exhibit A**. As grounds for removal, Schindler states as follows:

PRELIMINARY STATEMENT

1. On August 9, 2022, Plaintiff Seth Schorr filed a Complaint against Schindler in the Eighth Judicial District Court of Clark County, Nevada, Case No. A-22-856668-C. Plaintiff alleges that on January 22, 2021 he was injured at the Fremont⁹ Apartments, an apartment complex in Las Vegas, Nevada at which Plaintiff was a resident, when he “entered the elevator” and “the elevator suddenly and without warning dropped several floors.” Compl. (Ex. A) at ¶¶ 6, 10-11. Plaintiff brings causes of action against Schindler for strict product liability, negligence, and breach of implied warranties of merchantability and of fitness for a particular purpose. Compl. (Ex. A) at ¶¶ 18-56.

2. On September 29, 2022, Schindler was served with the Summons and Complaint. See Service of Process Transmittal Summary, attached as **Exhibit B**. Thus, this Notice of Removal is timely filed because it was filed within thirty days of the receipt of the Summons and Complaint by Schindler and within one year of the filing of the Complaint. 28 U.S.C. § 1446(b).

VENUE AND JURISDICTION

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 108, 1391, 1441(a), and 1446(a) because the Eighth Judicial District Court of Clark County, Nevada, where the Complaint was filed, is a state court within the United States District Court for the District of Nevada.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because (1) there is complete diversity between Plaintiff and all Defendants; (2) the amount in controversy exceeds \$75,000, exclusive of interests and costs; and (3) all other requirements for removal have been satisfied.

BASIS FOR REMOVAL

I. Complete Diversity of Citizenship Between Plaintiff and Defendants Exists.

5. Complete diversity of citizenship exists because Plaintiff is a Nevada citizen, and all named Defendants are citizens of other states.

6. Specifically, Plaintiff alleges that he is “a resident of the County of Clark, State of Nevada.” Compl. (Ex. A) at ¶ 1. Therefore, Plaintiff is, and at the time of the filing of this action was, a citizen of Nevada.

1 7. For purposes of diversity jurisdiction, a corporation is “a citizen of every State and
2 foreign state by which it has been incorporated and of the State or foreign state where it has its
3 principal place of business.” 28 U.S.C. § 1332(c)(1).

4 8. Schindler is not a citizen of Nevada. Schindler is, and at the time of the filing of
5 this action was, a foreign corporation organized under the laws of Delaware with its principal place
6 of business in New Jersey. Therefore, Schindler is, and at the time of the filing of this action was,
7 a citizen of Delaware and New Jersey.

8 9. For purposes of diversity jurisdiction, “partnerships are citizens of each state or
9 foreign country of which any partner is a citizen.” *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053,
10 FN 10 (9th Cir. 2019) (*citing Carden v. Arkoma Assocs.*, 494 U.S. 185, 192–195, 110 S.Ct. 1015,
11 108 L.Ed.2d 157 (1990)).

12 10. Wolff Principal Holdings, L.P. dba Fremont & 9th Apartments (“Wolff Holdings”)¹
13 is not a citizen of Nevada. Wolff Holdings is a foreign limited partnership organized under the
14 laws of Delaware with its principal place of business in Arizona. *See* Nevada Secretary of State
15 Entity Search Results for Wolff Principal Holdings, L.P., attached as **Exhibit C**.² Wolff Principal
16 Holdings, L.P.’s general partner is Wolff Principal Holding, LLC, which is also organized under
17 the laws of Delaware with its principal place of business in Arizona. *Id.*; *see also* Delaware
18 Secretary of State Entity Search Results for Wolff Principal Holdings, LLC, attached as **Exhibit**
19 **D**. Therefore, Wolff Holdings is, and at the time of the filing of this action was, a citizen of Arizona
20 and Delaware.

21 11. Furthermore, for purposes of removal under 28 U.S.C. § 1441, *et seq.*, the
22 citizenship of defendants sued under fictitious names is disregarded. *See* 28 U.S.C. § 1441(a).

23 12. Because Plaintiff is a Nevada citizen, Schindler is a citizen of Delaware and New
24 Jersey; and Wolff Holdings is a citizen of Delaware and Arizona, complete diversity exists between
25 Plaintiff and all named Defendants. *See* 28 U.S.C. §§ 1332(a), 1441(b)(1).

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¹ The spelling of this party in the Complaint differs from the Secretary of State listing and the party’s website, so Schindler will use the spelling used by the entity for purposes of this Petition.

² *See also* The Wolff Company, <https://www.awolff.com/contact/> (last visited Oct. 18, 2022).

1 **II. The Amount in Controversy Exceeds \$75,000.**

2 13. Plaintiff's claims satisfy the amount-in-controversy requirement set forth in
3 28 U.S.C. § 1332(a).

4 14. Nevada rules provide, if the pleader seeks more than \$15,000 in monetary damages,
5 the demand for relief may request damages "in excess of \$15,000" without further specification of
6 the amount. *See* NRCP 8; *see also* Compl. (Ex. A) at 11:8.

7 15. Where, as here, a Complaint does not set forth a specific amount of damages, "a
8 defendant's notice of removal need include only a plausible allegation that the amount in
9 controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co., LLC v.*
10 *Owens*, 574 U.S. 81, 89 (2014); *see also Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 406
11 (9th Cir. 1996) (applying the preponderance of the evidence standard). "[T]he defendant's amount-
12 in-controversy allegation should be accepted when not contested by the plaintiff or questioned by
13 the court," and "[e]vidence establishing the amount is required by § 1446(c)(2)(B) only when the
14 plaintiff contests, or the court questions, the defendant's allegation." *Dart Cherokee Basin*
15 *Operating Co.*, 574 U.S. at 87-89; *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,
16 377 (9th Cir. 1997) (Where a complaint does not allege a specific amount of damages, "the district
17 court may first consider 'whether it is facially apparent from the complaint that the jurisdictional
18 amount has been satisfied'"). Here, the nature and gravity of Plaintiff's allegations make it facially
19 apparent that the amount in controversy requirement has been satisfied.

20 16. Specifically, Plaintiff seeks several categories of damages based on "personal
21 injuries" which he "continues to suffer from...along with intense physical and mental pain, shock
22 and agony" including actual and compensatory damages, past and future medical expenses, past
23 and future wage loss, past and future pain and suffering, punitive damages, and attorney's fees. *See*
24 Compl. (Ex. A) at 8-9; Prayer for Relief.

25 17. Moreover, "[i]f a complaint does not specify an amount in controversy, the
26 defendant must prove by a preponderance of the evidence that the amount in controversy exceeds
27 \$75,000." *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699, 701 (9th Cir. 2007). "The Court
28 may look to the facts alleged in the removal petition or summary judgment-type evidence submitted

1 by the parties to determine whether the jurisdictional requirement was met at the time of
 2 removal.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). In
 3 doing so, removing parties may use documents such as a demand letter to show the amount in
 4 controversy is met. *See Smith v. Smith's Food & Drug Centers, Inc.*, 2:14-CV-00681-APG, 2014
 5 WL 3734363, at *1 (D. Nev. July 29, 2014) (“A settlement letter is relevant evidence of the amount
 6 in controversy if it appears to reflect a reasonable estimate of the plaintiff's claim.”); *Cayer v. Vons*
 7 *Companies*, 2:16-CV-02387-GMN-NJK, 2017 WL 3115294, at *3 (D. Nev. July 21, 2017) (citing
 8 *Cohn v. PetSmart, Inc.*, 281 F.3d 839, 840 (9th Cir. 2002)); and *Dominguez v. Ralphs Grocery Co.*,
 9 No. 2:13–CV–2233–GMN–PAL, 2014 WL 4162378, at *2 (D. Nev. Aug. 20, 2014).

10 18. In *Smith v. Smith's Food & Drug Centers, Inc.*, this Court relied on a pre-litigation
 11 demand letter in a slip and fall case, requesting \$110,000, and determined that removal was proper
 12 and the amount in controversy was met. *See* 2014 WL 3734363, at *2 (D. Nev. July 29, 2014).
 13 The demand letter in *Smith* alleged that, while the plaintiff had not yet incurred more than \$75,000
 14 in medical bills, he had a scheduled shoulder surgery, future medical expenses, lost wages, and pain
 15 and suffering, and the case was properly removed. *See id.*

16 19. Here, like in *Smith*, Plaintiff sent Schindler’s third-party claims administrator a pre-
 17 litigation demand letter on January 21, 2022. *See* Demand Letter, attached as **Exhibit E**. This
 18 demand letter outlines Plaintiff’s medical treatment for his alleged injuries. Specifically, Plaintiff
 19 alleges that he has incurred “**\$190,244.51+**” in past medical expenses to date. *Id.* at 12.
 20 Additionally, Plaintiff alleges millions of dollars in future costs (**\$2,575,944** for “TBI Rehab &
 21 Retesting,” **\$310,081** for “Transforaminal Lumbar Fusion,” and **\$298,355** for “Cervical Fusion”).
 22 *Id.* In total, Plaintiff alleges medical expenses in the amount of **\$3,974,624.51+**,” which by far
 23 exceeds the jurisdictional threshold. *Id.*

24 20. In addition, there are three additional past medical bills that are “pending,”
 25 necessarily increasing the amount already allegedly incurred further over the \$75,000 threshold.
 26 Thus, Plaintiff’s past medical expenses here—\$190,244.51 *plus*—alone exceed the jurisdictional
 27 threshold, with more bills alleged to be added to the calculation. Moreover, Plaintiff’s demand
 28 letter alleges that his quality life has completely changed since the incident. *See id.* at 12-13.

1 21. While Schindler does not concede that it is liable for any of the tortious conduct
2 alleged that would warrant the imposition of any of the several categories of damages, including
3 pain and suffering, loss of earning capacity, punitive damages, \$190,244.51 in past medical
4 damages, and more than \$3 million in alleged future medical damages as outlined in Plaintiff's
5 demand letter, the amount in controversy easily exceeds \$75,000 and this removal is proper.

6 **III. All Other Removal Requirements Are Satisfied.**

7 22. The Notice of Removal is timely and properly filed pursuant to 28 U.S.C. § 1446(6).

8 23. Schindler was served with the Summons and Complaint on September 29, 2022 (Ex.
9 B).

10 24. The only other named defendant, Wolff Holdings, was served on September 29,
11 2022. Counsel for Wolff Holdings informed counsel for Schindler that Wolff Holdings consents to
12 removal.

13 25. Removal pursuant to 28 U.S.C. § 1441(a) requires that "all defendants who have
14 been properly joined and served must join in or consent to the removal of the action." This
15 requirement is met here because the two defendants who have been properly joined and served—
16 Schindler and Wolff Holdings—join and consent to the removal of the action. 28 U.S.C.
17 § 1446(b)(2)(A). The unidentified Doe and Roe defendants are not required to consent to removal.
18 *See Hafiz v. Greenpoint Mortg. Funding*, 409 F. App'x 70, 72 (9th Cir. 2010) (nominal parties are
19 not required to consent to removal).

20 26. Schindler is providing Plaintiff with written notice of the filing of this Notice of
21 Removal as required by 28 U.S.C. § 1446(d).

22 27. Pursuant to 28 U.S.C. § 1446(d), Schindler is filing a copy of this Notice of Removal
23 with the Clerk of the District Court of Clark County, Nevada.

24 28. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other
25 papers filed in the state court action—as available from the state court docket or otherwise made
26 available to Schindler at the time of filing this Notice—are attached hereto. (Ex. A).

1 29. The written notice required by 28 U.S.C. § 1446(d), attached hereto as **Exhibit F**,
2 will be promptly filed in the Eighth Judicial District Court of Clark County, Nevada, and will be
3 promptly served on all parties.

4 30. By filing this Notice of Removal, Schindler does not waive any defense that may be
5 available to them and reserve all such defenses, including but not limited to those related to service
6 of process and lack of personal jurisdiction. If any question arises regarding the propriety of the
7 removal to this Court, Schindler requests the opportunity to present a brief oral argument in support
8 of their position that this case has been properly removed.

9 31. No previous application has been made for the relief requested herein.

10 **IV. Demand for Jury Trial.**

11 32. Schindler hereby demands a separate jury trial on all claims and issues so triable.

12 **CONCLUSION**

13 WHEREFORE, Schindler gives notice that the matter bearing Case No. A-22-856668-C
14 pending in the Eighth Judicial District Court of Clark County, Nevada, is removed to the United
15 States District Court for the United States District Court for the District of Nevada, and requests
16 that this Court retain jurisdiction for all further proceedings in this matter.

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18 DATED: October 28, 2022.

19 /s/ Jay J. Schutttert

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 Attorneys for Defendant

 Schindler Elevator Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PETITION FOR REMOVAL** was served on counsel of record this 28th day of October, 2022 using the Court's CM/ECF System.

/s/ Faith Radford
An Employee of Evans Fears & Schuttart LLP